

REMARKS

This is in response to the Office Action dated June 9, 2009. Applicants gratefully acknowledge the Examiner's indication that this application contains allowable subject matter. Claim 47 is amended, without change of scope, to show the simplified version of formula (I) contemplated by the claim. No new matter is added to the application by this Amendment. Claims 30, 32, and 44-52 are now pending in this application.

Objection

On page 2 of the Office Action, the Examiner objects to claims 30, 32, 44, and 47-52 on the ground that they contain non-elected subject matter. Applicants respectfully submit that this is not a valid ground for objection. In fact, as the Examiner is no doubt aware, when there is a generic claim and an election of species, the generic claim always contains non-elected subject matter. Applicants respectfully request that the objection be withdrawn. ***It is noted that Applicants made this point in the Amendment filed on March 26, 2009, and that the Examiner did not respond to Applicants' point.***

Rejoinder requested

The Examiner is respectfully requested to consider claim 45 on its merits along with the remainder of the claims currently pending in this application.

Ex parte Quayle

MPEP 707.07(j) directs that "When an application discloses patentable subject matter ... but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and ... should offer a definite suggestion for correction." The outstanding Office Action fails to offer a definite suggestion for "correction" of any of Applicants' claims. The Examiner is respectfully requested to indicate how each of

claims 30, 32, 44, 47, 48, 49, 50, 51, and 52 should be “corrected.” In particular, the Examiner is requested to indicate what generic scope – beyond the scope of claim 46 – he believes should be recited in Applicants’ subgeneric and generic claims.

The Office Action purports to close prosecution on the ground that only objections as to form remain. In fact, the so-called “Claim Objections” are substantive in nature, in that they require elimination of subject matter from the claims.

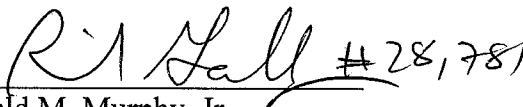
Contact information

Please contact Richard Gallagher (Reg. No. 28,781) at (703) 205-8008 with any questions concerning the present application.

Dated: July 31, 2009

Respectfully submitted,

By

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